

Larry Zerner (SBN 155473)  
Morrison Cooper  
10900 Wilshire, Suite 930  
Los Angeles, California 90024  
Telephone: (310) 773-3623  
Email: Larry@MorrisonCooper.com

Attorney for Defendants Mitchell Clout  
And Koil Content Creation Pty Ltd.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

THAT ONE VIDEO  
ENTERTAINMENT, LLC, a California  
limited liability company,

Plaintiff,

v.

KOIL CONTENT CREATION PTY  
LTD., an Australian proprietary  
limited company doing business as  
NOPIXEL; MITCHELL CLOUT, an  
individual; and DOES 1-25,  
inclusive,

Defendants.

Case No. 2:23-CV-02687 SVW  
(JCx)

[Assigned to the Hon. Stephen V.  
Wilson; Ctrm 10A]

**DEFENDANTS REPLY BRIEF IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

**Hearing**

Date: October 21, 2024

Time: 1:30 p.m.

Dept.: Courtroom 10A (10th Floor)

350 W. First Street

Los Angeles, CA 90012

Judge: Hon. Stephen V. Wilson

1 On September 23, 2024, Defendants filed the instant Motion for Summary  
2 Judgment. Per court rules, Plaintiff's opposition brief was due to be filed no later  
3 than September 30, 2024 (21 days prior to the October 21, 2024 hearing date).  
4 Plaintiff did not file any opposition brief to Defendants' Motion. Accordingly,  
5 Defendants' request that the court enter summary judgment in Defendants' favor as  
6 there are no issues in dispute.

7 FRCP 56(e) states, in pertinent part, "If a party fails to properly support an  
8 assertion of fact or fails to properly address another party's assertion of fact as  
9 required by Rule 56(c), the court may:

10 . . . (2) consider the fact undisputed for purposes of the motion; [or]  
11 (3) grant summary judgment if the motion and supporting materials—including the  
12 facts considered undisputed—show that the movant is entitled to it; . . ."

13 CD CA Rule 56-3 states, "In determining any motion for summary judgment  
14 or partial summary judgment, the Court may assume that the material facts as  
15 claimed and adequately supported by the moving party are admitted to exist without  
16 controversy except to the extent that such material facts are (a) included in the  
17 "Statement of Genuine Disputes" and (b) controverted by declaration or other written  
18 evidence filed in opposition to the motion."

19 In the present case, Plaintiff has not presented any evidence to controvert the  
20 (now) undisputed facts that, *inter alia*, (1) Daniel Tracey granted Koil a license to  
21 incorporate his code into the NoPixel server, (2) there was never an agreement to  
22 "loan-out" Mr. Tracey's services to Koil, and (3) the code that Mr. Tracey  
23 contributed to the NoPixel server was not a joint work and thus neither Mr. Tracey  
24 nor Plaintiff can be considered to be a joint author of the NoPixel server.  
25  
26  
27  
28

1 In light of these undisputed facts, Defendants’ respectfully request that the  
2 Court grant the motion and enter summary judgment in favor of Defendants.

3  
4 DATED: October 3, 2024

5 **MORRISON COOPER**

6 By: /s/Larry Zerner  
7 Larry Zerner Attorney for KOIL  
8 CONTENT CREATION PTY LTD.,  
9 AND MITCHELL CLOUT  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28